

REMARKS

1. Formal Matters

a. Status of the Claims

Claims 21 and 46-52 are pending in this application. Claims 46-51 are hereby cancelled without prejudice to pursuing these claims in a continuing application. Claims 21 and 52 are amended and claims 53-56 are new. Upon entry of these amendments, claims 21 and 52-56 are pending and under active consideration. Applicant respectfully requests entry of the amendments and remarks made herein into the file history of the present application.

b. Amendments to the Claims

Support for the claim amendments can be found in the application as originally filed as described in Table 1.

Table 1

Claim	Support
53	Paragraph 0027
54	Table 1, lines 10,279-10,284; claim 1; paragraphs 20,719 and 20,720
55	As described for new claim 54; and paragraph 0023
56	As described for new claim 54; and paragraph 0027

2. Patentability Remarks

a. Rejection Pursuant to 35 U.S.C. § 112, Second Paragraph

On page 4 of the Office Action, the Examiner rejects claim 51 under 35 U.S.C. § 112, second paragraph as allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In view of the Applicant's cancellation of claim 51, Applicant respectfully submits that the foregoing rejection is moot.

b. Rejection Pursuant to 35 U.S.C. § 112, First Paragraph

On page 4 of the Office Action, the Examiner rejects claims 21 and 46-52 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that the specification does not contemplate as part of the invention a genus of sequences up to 120 nucleotides in length and sharing at least 62.5% identity with a sequence of at least 18 nucleotides of SEQ ID NO: 37405.

Without prejudice to pursuing the canceled subject matter in a continuing application, claim 21 is amended to no longer recite a sequence at least 62.5% identical to a nucleic acid of 18 to 24 consecutive nucleotides of SEQ ID NO: 37405. Amended claim 52 no longer recites a vector comprising the nucleic acid of claims 46, 47, 48, 49, or 50. Moreover, claims 46-51 have been canceled, thereby rendering the Examiner's rejection of these claims moot. In view of the foregoing amendment and remarks, Applicant respectfully requests that the written description rejection of claims 21 and 52 under 35 U.S.C. § 112, first paragraph, has been overcome and should be withdrawn.

c. Provisional Obviousness-Type Double Patenting

On pages 2 and 3 of the Office Action, the Examiner provisionally rejects the instant claims on the ground of obviousness-type double patenting over various cited patent applications. Applicant respectfully requests that the Examiner hold the rejection in abeyance until there is allowable subject matter, at which time the rejection may be withdrawn from the instant application and applied to any later-filed application and/or Applicant will consider amending the claims in any earlier filed applications or filing a terminal disclaimer.

3. Conclusion

Applicant respectfully submits that the instant application is in good and proper order for allowance and early notification to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution of the instant application, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

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